

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Maria Stokes,  
Plaintiff,

vs.

Microsemi Corporation,,  
Defendant.

No. CV02-1689-PHX-LOA  
**ORDER**

This matter arises on Defendant's Motion to Compel Answers to Interrogatories And for Sanctions *etc.* (doc. #16) and Motion to Compel Written Responses and Documents And for Sanctions *etc.* (doc. #17), filed on June 5, 2003. The Court has reviewed and considered all the pleadings thereon including Defendant's Supplemental Notice (doc. #23) and Plaintiff's timely Response to Order to Show Cause (doc. #24). No Reply has been filed by Defendant.

Defendant seeks an order compelling discovery and an award of attorney's fees for filing the subject motions in order to obtain discovery compliance which the Rules of Civil Procedure require without judicial involvement. It is clear that when Defendant filed the subject motions on June 5, 2003, Plaintiff's counsel had not only failed to timely and completely disclose the information sought by Defendant but also apparently ignored defense counsel's letters of April 18, 2003, May 1, 2003 and a telephonic request on May 1, 2003. It was not until eleven (11) days after Defendant filed the subject motions did Plaintiff's

1 counsel provide the untimely discovery. Plaintiff's Response indicates that any deficiencies  
2 in Plaintiff's initial discovery answers and responses were cured on July 30, 2003. The  
3 absence of a Reply by Defendant likely confirms that Defendant is satisfied with Plaintiff's  
4 discovery answers and responses through the present date. Sanctions against Plaintiff or her  
5 attorney for failure to timely comply with Defendant's discovery requests would be  
6 appropriate. See, Rule 37(a)(4)(A), FED.R.CIV.P.

7 Plaintiff's Response acknowledges that discovery sanctions, if awarded, should  
8 be assessed against Plaintiff's counsel himself, not his client, due to counsel's failure to meet  
9 his discovery responsibilities as Plaintiff's attorney. He objects, however, to any award of  
10 fees because Defendant failed to comply with Local Rule 1.10(j) and failed to itemize the  
11 work performed in seeking discovery compliance or the rates charged to establish the  
12 reasonableness of the \$3000.00 in attorney's fees requested by Defendant. The Court agrees  
13 that Defendant has failed to establish the reasonableness of the attorney's fees requested.

14 Local Rule 1.10(j) requires that before a party may seek judicial relief on a  
15 discovery motion, the moving attorney must certify that "after personal consultation and  
16 sincere efforts to do so, counsel [has] been unable to satisfactorily resolve the matter."  
17 Plaintiff's counsel provides no specifics on how defense counsel violated Local Rule 1.10(j).  
18 The Court does not know what more Plaintiff's counsel would expect an attorney to do that  
19 wasn't done by defense counsel. Two letters, a phone call during a period of nearly two  
20 months after the discovery was due, a signed certification attached to the discovery motion  
21 and a three-page Declaration under oath (doc. #18) meet and, indeed, exceed the District of  
22 Arizona's mandate in Local Rule 1.10(j). Plaintiff's argument on this ground is wholly  
23 without merit.

24 The Court has previously ordered all counsel herein to comply with the Local  
25 Rules. See, Scheduling Order (doc.#15), filed January 7, 2003. Local Rule 2.20(a) and (e)  
26 set forth the procedural requirements for most cases for any party to establish the  
27 reasonableness of the attorney's fees sought against another party. The scope of the Rule  
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1 addressed in Rule 2.20(a) is broad enough to include a request for discovery sanctions in the  
2 form of an award of attorney's fees. Defendant has failed to comply with this Local Rule by  
3 not providing the Court with any affidavit, much less one in full compliance with Local Rule  
4 2.20(e), that would give the Court some of the basic information needed to determine if  
5 \$3000.00 or a lesser sum is a reasonable fee sanction under Rule 37(a)(4)(A). The party  
6 seeking the fees award bears the burden of proving the reasonableness of its attorneys' fees  
7 requested. See, Hensley v. Eckerhart, 461 U.S. 424, 437, 103 S.Ct. 1933, 76 L.Ed.2d 40  
8 (1983). A determination of the proper fees to award may begin with a calculation of the  
9 "lodestar," which is the number of hours reasonably expended multiplied by a reasonable  
10 hourly rate. See, In re Washington Pub. Power Supply Sys. Secs. Litig., 19 F.3d 1291 (9th  
11 Cir.1994); Eddleman v. Switchcraft, Inc., 965 F.2d 422, 424 (7th Cir.1992). Without an  
12 appropriate affidavit, however, the Court is forced to speculate on the hours expended and  
13 the hourly rate billed which it will not do.

14 In the absence of an attorney's fees affidavit, the Court has considered imposing  
15 a minimal hourly rate for what it might estimate, based upon its significant experience, the  
16 Phoenix legal community's minimal hourly rate times the minimal amount of time the Court  
17 might reasonably expect to have been incurred by defense counsel on the matter. The Court,  
18 however, is not inclined to estimate the attorney's fees incurred because there is no evidence  
19 that the party, the Defendant itself, has paid or will be responsible for paying the attorney's  
20 fees incurred by defense counsel in seeking the untimely discovery. See, Lisa v. Strom, 183  
21 Ariz. 415, 419, 904 P.2d 1239, 1243 (App.1995)( "a genuine financial obligation on the part  
22 of the litigant[ ] to pay such fees" is required before the Court may enter an award of  
23 attorney's fees.).

24 Accordingly,

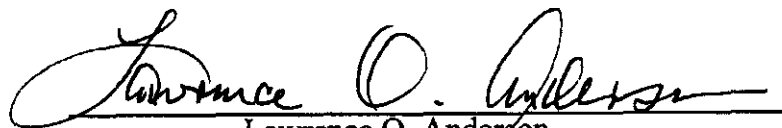
25 **IT IS ORDERED** that Defendant's Motion to Compel Answers to Interrogatories  
26 And for Sanctions *etc.* (doc. #16) is **DENIED**. Defendant's Motion to Compel Written

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1 Responses and Documents And for Sanctions *etc.* (doc. #17) is **DENIED** as moot.

2 DATED this 9<sup>th</sup> day of September, 2003.

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5 Lawrence O. Anderson  
6 United States Magistrate Judge  
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